

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MEREDITH FRANCIS,

Plaintiff,

v.

Case No. 05-cv-02062-KHV-DJW

SPRINT UNITED MANAGEMENT CO.,

Defendant.

ORDER

Pending before the Court are Defendant's Motion for Attorney's Fees and Costs (doc. 72) and Defendant's Bill of Costs (doc. 73). For the reasons stated below, Defendant's Motion and its request for taxation of costs to Plaintiff will be granted.

By way of background, Defendant filed its Second Motion to Dismiss and/or for Other Sanctions on March 21, 2006 (doc. 62). In ruling on the motion, the district court judge dismissed the case with prejudice pursuant to Fed. R. Civ. P. 41(b) (doc. 64). With regard to Defendant's request for fees and costs in conjunction with the motion, the May 15, 2006 Memorandum and Order dismissing the case directed as follows:

Plaintiff shall reimburse Defendant the reasonable costs and attorney's fees which it incurred from March 9, 2006 when plaintiff failed to appear for her deposition, up to and including the costs and fees which it incurred in filing its second motion to dismiss and any supplemental briefing which is required by this order.

The district court judge ordered the parties to confer and attempt to reach an agreement on the amount of costs and fees. If the parties were not able to reach an agreement on the issue, the parties were directed to brief the issue. Plaintiff's counsel further was directed to show cause why he should not be held personally liable for the costs and fees assessed in this order.

Plaintiff's counsel responded to the show cause order (doc. 70) and, in conjunction with the response, requested leave to file supporting documentation *in camera* (doc. 71) for the Court's review. Although the Court granted Plaintiff's counsel permission to file such documentation *in camera* (doc. 74), counsel for Plaintiff ultimately failed to do so.

On June 1, 2006, Defendant filed its Motion for Fees and Costs (doc. 72) pursuant to the directive in the May 15, 2006 Order. In the body of this motion, Defendant explains that

[o]n May 18, 2006, Defendant's counsel sent a letter to Plaintiff's counsel outlining Defendant's position that Plaintiff and/or Plaintiff's attorney must reimburse Defendant for fees and costs in the amount of \$1,108.75 pursuant to this Court's May 15, 2006, Order. On May 30, 2006, Defendant's counsel spoke with Plaintiff's counsel about this and related issues. At the end of the conversation, Plaintiff's counsel stated that he would review the letter again, and that if Defendant's counsel did not hear from Plaintiff's counsel, Defendant could assume Plaintiff agreed to the amount stated in the letter. * * * Defendant's counsel has heard nothing from Plaintiff's counsel.

Plaintiff did not file a response to this Motion for Fees and Costs.

On June 14, 2006, Defendant filed a Bill of Costs requesting to tax costs in the amount of \$2,119.59 against Plaintiff (doc. 73). Plaintiff did not file a response to the Bill of Costs. U p o n consideration of the pleadings filed and the circumstances presented,

- (1) the Court hereby grants Defendant's Motion for Fees and Costs (doc. 72) and orders Plaintiff's counsel to pay \$1,108.75 in fees and costs to Defendant pursuant to the Court's May 15, 2006 Memorandum and Order. The sanctions are imposed against the law firm of Plaintiff's counsel, rather than Plaintiff herself, as the Court is not persuaded that Plaintiff was responsible for the sanctionable conduct¹; and

¹To the extent possible, sanctions should be imposed only upon the person or entity responsible for the sanctionable conduct. *Kan. Wastewater, Inc. v. Alliant Techsystems, Inc.*, 217 F.R.D. 525, 532 n.28 (D. Kan. 2003). Moreover, sanctions should be imposed against the law firm rather than the individual attorneys representing the party. *See id* (holding law firm rather than individual attorneys responsible for payment of fees and expenses awarded under Rule 37(a)(4)).

(2) the Court hereby grants Defendant's request for taxation of costs to Plaintiff in the amount of \$2,119.59 and hereby directs the Clerk of the Court to tax such amount as costs.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 11th day of August, 2006.

s/David J. Waxse
David J. Waxse
United States Magistrate Judge

cc: All counsel and *pro se* parties